



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष ४, अंक ६३]

मंगळवार, नोव्हेंबर ६, २०१८/कार्तिक १५, शके १९४०

[पृष्ठे ४, किंमत : रुपये ९.००

असाधारण क्रमांक ९३

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिका-यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क), जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

BEFORE THE GOVERNOR OF MAHARASHTRA

In Re.—Petition under Articles 191(1)(a) and 192 of the Constitution of India by Sardar Surendra Singh regarding alleged disqualification of Sardar Tara Singh, Member of the Maharashtra Legislative Assembly.

Order

Sardar Surendra Singh, Member, the Takht Sachkhand Shri Hazur Apchalnagar Sahib Board, Nanded, Taluka and District - Nanded, has filed a petition for disqualification of Sardar Tara Singh, Member of the Maharashtra Legislative Assembly, under Article 191(1)(a) of the Constitution of India alleging that he is holding 'Office of Profit' as he was appointed as Member and President of the Takht Sachkhand Shri Hazur Apchalnagar Sahib Board, Nanded, *vide* Notification dated 16th March 2015, by the Government of Maharashtra, issued in exercise of the powers conferred upon it by the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib (Amendment) Act, 2015, published in *Official Gazette* on 17th April 2015 which has amended the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956 (hereinafter referred to as "the Board Act").

2. The petitioner relied on the Judgment passed by the Hon'ble Division Bench of the Bombay High Court (Aurangabad Bench) in Writ Petition No. 1169/2005 titled as '*Sardar Surjeet Singh Girniwale & others Vs. State of Maharashtra & Others*' [(2006) 2 Bom. C.R. 704] wherein it has been held that the office of Member or President of Gurudwara Committee *i.e.* Board is an 'Office of Profit'. It is further averred by the petitioner that the said order has attained finality since the same has not been challenged further.

The petitioner has also emphasized that Sardar Tara Singh is gaining pecuniary benefits, by virtue of the operation of clauses 15 and 16 of Takht Shri Hazur Sahib Bye-Laws, 1975, providing for the 'Honoraria' to the President, Chairman and Secretary of the Gurudwara Committee and for the payment of 'allowance of rupees ten/five' to the Members of the Gurudwara Board/Committee in addition to travelling allowance and daily allowance for attending the meetings, respectively.

The petitioner also relied upon the decision of the Hon'ble Supreme Court in *Shivamurthy Swami Inamdar Vs. Agadi Sanganna Andanappa* [(1971) 3 SCC 870] wherein the apex court held that :

“The word ‘Profit’ connotes the idea of pecuniary gain. If there is a really gain, in quantum or amount would not be material ; but the amount of money receivable by a person in connection with the office he holds may be material in dealing whether the office really carries any profit”.

The petitioner, has, therefore, prayed to disqualify Sardar Tara Singh, from the membership of the Maharashtra Legislative Assembly under Article 191(1)(a) of the Constitution of India.

3. As required by the provisions of clause(2) of Article 192 of the Constitution, the question of the alleged disqualification was referred to the Election Commission of India for its opinion.

4. The Election Commission of India, *vide* letter No. 113/8(G)/ECI/LET/FUNC/JUD/2017/Registry/852, dated 31st July 2017 made an inquiry with the Government of Maharashtra.

In response to the said letter of the Commission, the Deputy Secretary, Revenue and Forests Department, *vide* letter dated 2nd December 2017, has stated that the post of Member and President are not exempted from disqualification and there are provisions for the sanction of ‘Honorarium’, ‘Dearness Allowance’ and ‘Sitting Fees’ to the President. It was, however, clarified in the said letter that Sardar Tara Singh has not taken any kind of honorarium or facility or pecuniary benefit, whatsoever despite being appointed as Member and President of the Board.

5. Subsequently, the Commission sent a notice to Sardar Tara Singh, *vide* letter No. 113/8(G)/ECI/LET/FUNC/JUD/2017/Registry dated 16th April 2018 whereby he was called upon to submit his written response by 11th May 2018.

Thereupon, Sardar Tara Singh wrote a letter dated 26th April 2018 addressed to the Commission wherein he denied having taken any pecuniary benefit from the said post. Thereafter, the Counsel for the Sardar Tara Singh filed an Additional Affidavit in reply before the Commission on 25th May 2018.

In his reply, Sardar Tara Singh, MLA, submitted that the legislative intent behind the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956 was to appoint representatives of the people as Members and President of the Gurudwara Committee and Board and it was in furtherance of such a legislative intent that his appointment has been made and therefore he should not be disqualified for holding ‘Office of Profit’ as he is holding this post merely in honorary capacity and has not drawn any pecuniary benefit at all.

6. Thereafter, the Election Commission of India examined the instant matter in the light of the provisions of the Maharashtra Legislature Members (Removal of Disqualification) Act, 1956, Chapter II of the Board Act and the Judgment of Hon'ble Bombay High Court in *Sardar Surjeet Singh Girniwale & others Vs. State of Maharashtra & others*, and opined as follows :—

The Maharashtra Legislative Members (Removal of Disqualification) Act, 1956 provides that the disqualification for holding ‘Office of Profit’ shall be deemed to have never been attracted on the offices mentioned in the Schedule appended to the Act. Entry 19 of Schedule I of the Act reads under :

“19. The office of the Chairman, Vice-Chairman or any other member of the Board of Directors (by whatever name called) of any other Corporation, owned or controlled by the State Government which is not mentioned in any of the above entries in this Schedule and to which appointment is made by the State Government.

Explanation.— For the purpose of this entry,—

(3) the expression “a corporation ” means any body-corporate and shall include a society registered under the Societies Registration Act, 1860 (21 of 1860) in its application to the State of Maharashtra, or any body constituted under any law for the time being in force, :

(4) the expression "a corporation controlled by the State Government" shall include a corporation in which not less than twenty-five per cent of the paid up share capital is held by the State Government. "

The above quoted entry 19 of the Schedule I of the Act exempts the office of Chairman, Vice-Chairman or any other Member of the Board of Directors (by whatever name called) of any other corporation (corporation means any body-corporate and includes society registered under the Societies Registrations Act, 1860 or any body constituted under any law for the time being in force) owned or controlled by the State Government which is not mentioned in any of the above entries in this Schedule and to which appointment is made by the State Government.

The office of Member and President of the Gurudwara Board, Nanded, is a body corporate which has been constituted by a statute which is the Board Act and does not find any mention in any other entry in the Schedule of the Act. Moreover, the appointment to the said post had been done by the Government of Maharashtra as per the provisions of the Board Act. Now, the only remaining question is whether the Gurudwara Board of Nanded is 'owned' or 'controlled' by the State Government.

Chapter II of the Board Act titled as 'Control of the Gurudwara' and section 53 of the Board Act reads as under :—

"3. For the purpose of this Act there shall be constituted a Board and a Committee of Management, in the manner hereinafter provided.

4. The affairs of the Gurudwara shall be administered by a Board constituted therefor. The Board shall exercise its powers of administration, control and management of the Gurudwara in accordance with the provisions of this Act. "

"53. (1) If the Government is of the opinion that the Board is unable to perform, or has persistently made default in the duty imposed on it by or under this Act or has exceeded or abused its powers, the Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification :

Provided that, before issuing a notification under this sub-section, the Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1), superseding the Board—

(a) all the members of the Board and the Committee shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board or the Committee shall, during the period of supersession be exercised and performed by such person or persons as the Government may direct, and;

(c) all property vested in the Board shall, during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), Government may—

(a) extend the period of supersession for such period as it may consider necessary, or

(b) reconstitute the Board and the Committee in the manner provided in Chapter II. "

Hon'ble Bombay High Court in Para 41 of Sardar Surjeet Singh Girniwale & others Vs. State of Maharashtra & others Judgment has observed as follows :—

"41. Section 53 of the said Act deals with the power of the Government to supersede the managing body of the Gurudwara. It clearly provides that if the Government is of opinion that the

Board is unable to perform, or Committee defaults in performance of its duty or abuses its powers, same can be superseded and new committee can be appointed. The Board would obviously include its member and if member is unable to perform either on account of statutory restrictions or constitutional mandate and there is failure on the part of the holder of such office to vacate the same, certainly it will be the obligation of the Government to take recourse to the said provisions of law. In fact, the plain reading of the said section would disclose that it is the duty of the Government to take appropriate steps when a member is unable to perform his duties or other reasons specified in the said provisions. [....].

[Emphasis supplied]

In view of the above, it is abundantly clear that there is an all pervasive control of the State Government on the functioning of the Gurudwara Board. The above analysis also makes it perspicuous that the office of Member and President of the Gurudwara Board of Nanded fall within the wide sweep of Entry 19 of Schedule I of the Act.

It is pertinent to note that the Hon'ble Bombay High Court has held in *Sardar Surjeet Singh Girniwale & others Vs. State of Maharashtra & other (Supra)*, the office of Member or President of Gurudwara Committee constituted under the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956 to be an 'Office of Profit' within the meaning of the expression 'any other office of profit' under Article 158(2) of the Constitution of India only and since there is no provision of creating exemption to the same by an Act of the Legislature, the Hon'ble High Court was not required to look into the question of exemption. The Commission has opined that, in the Reference cases, statutorily granted exemption is the most important factor and in light of the exemption granted under the Maharashtra Legislature Members (Removal of Disqualification) Act, 1956, disqualification of holding an 'Office of Profit' arising out of holding the office of Member and President of the Gurudwara Committee and Boards stands removed.

In view of the above, Sardar Tara Singh, the Member of the Maharashtra Legislative Assembly, is not disqualified for holding 'Office of Profit' having held the office of Member and President of the Gurudwara Board of Nanded.

7. Thus, in accordance with the said opinion of the Election Commission of India, I pass the following order :—

ORDER

The petition of Sardar Surendra Singh is hereby, for the reasons stated above, dismissed.

Dated 30th October 2018.

CH. VIDYASAGAR RAO,
Governor of Maharashtra.

क्रमांक डीआयएस-२०१८/प्र.क्र. ७९१/१८/३३

सामान्य प्रशासन विभाग

मादाम कामा रोड, हुतात्मा राजगुरू चौक,

मंत्रालय, मुंबई ४०० ०३२,

दिनांक ६ नोव्हेंबर २०१८.

प्रत, माहिती व योग्य कार्यवाहीसाठी अग्रेषित :

- (१) प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय, विधान भवन, मुंबई,
- (२) सचिव, मा. राज्यपाल यांचे कार्यालय (१० प्रती),
- (३) निवडनस्ती.

शुभा बोरकर,

अवर सचिव व उप मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.